

AMENDED IN SENATE JUNE 21, 2006  
AMENDED IN ASSEMBLY MAY 31, 2006  
AMENDED IN ASSEMBLY MAY 26, 2006  
AMENDED IN ASSEMBLY MAY 1, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2922**

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**Introduced by Assembly Member Jones**

February 24, 2006

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An act to amend Section 33334.3 of the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2922, as amended, Jones. Redevelopment: Low and Moderate Income Housing Fund.

Existing law authorizes redevelopment agencies to pay the principal of, and interest on, indebtedness incurred to finance or refinance redevelopment, from a portion of property tax revenues diverted from other taxing agencies. The portion of taxes diverted is the amount attributable to increases in assessed valuation of property in the redevelopment project area subsequent to establishment thereof. This method of financing is commonly known as “tax increment” financing and is specifically authorized by Section 16 of Article XVI of the California Constitution.

Existing law requires a redevelopment agency to use at least 20% of its tax increment revenues for the purposes of increasing, improving, and preserving the community’s supply of low- and moderate-income housing available at affordable cost to persons and families of low or

moderate income and lower, very low, and extremely low income households that are occupied by these persons and families unless the agency makes certain findings. These funds are required to be deposited in a separate Low and Moderate Income Housing Fund.

Existing law requires covenants and restrictions on the affordability of all new or substantially rehabilitated housing units developed or assisted with funds required to be used for low- and moderate-income housing to be recorded in the office of the county recorder and makes those covenants and restrictions enforceable by the agency or the community.

This bill would make the covenants and restrictions enforceable by any interested party, including a person or family of low or moderate income that is eligible to reside in the property and would require the agency to obtain and maintain a copy of the covenants and restrictions.

*The bill would require the agency, concurrently with the recordation of the covenants or restrictions, to also record a specified request for notification of any resale or transfer of the real property for the life of the covenants or restrictions and to obtain and maintain a copy of the recorded request for notification for at least the life of the covenants or restrictions. The bill would also require the agency to concurrently record a separate document entitled "Affordable Housing Restrictions on Transfer of Property," which would be required to state and reference the affordability covenants or restrictions by recorder's identification number and to include a description of the property.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 33334.3 of the Health and Safety Code
- 2 is amended to read:
- 3 33334.3. (a) The funds that are required by Section 33334.2
- 4 or 33334.6 to be used for the purposes of increasing, improving,
- 5 and preserving the community's supply of low- and
- 6 moderate-income housing shall be held in a separate Low and
- 7 Moderate Income Housing Fund until used.
- 8 (b) Any interest earned by the Low and Moderate Income
- 9 Housing Fund and any repayments or other income to the agency

1 for loans, advances, or grants, of any kind from the Low and  
2 Moderate Income Housing Fund shall accrue to and be deposited  
3 in, the fund and may only be used in the manner prescribed for  
4 the Low and Moderate Income Housing Fund.

5 (c) The moneys in the Low and Moderate Income Housing  
6 Fund shall be used to increase, improve, and preserve the supply  
7 of low- and moderate-income housing within the territorial  
8 jurisdiction of the agency.

9 (d) It is the intent of the Legislature that the Low and  
10 Moderate Income Housing Fund be used to the maximum extent  
11 possible to defray the costs of production, improvement, and  
12 preservation of low- and moderate-income housing and that the  
13 amount of money spent for planning and general administrative  
14 activities associated with the development, improvement, and  
15 preservation of that housing not be disproportionate to the  
16 amount actually spent for the costs of production, improvement,  
17 or preservation of that housing. The agency shall determine  
18 annually that the planning and administrative expenses are  
19 necessary for the production, improvement, or preservation of  
20 low- and moderate-income housing.

21 (e) (1) Planning and general administrative costs that may be  
22 paid with moneys from the Low and Moderate Income Housing  
23 Fund are those expenses incurred by the agency that are directly  
24 related to the programs and activities authorized under  
25 subdivision (e) of Section 33334.2 and are limited to the  
26 following:

27 (A) Costs incurred for salaries, wages, and related costs of the  
28 agency's staff or for services provided through interagency  
29 agreements, and agreements with ~~contractors. In order to~~  
30 ~~establish the direct relation between the salaries, wages, and~~  
31 ~~related costs of agency staff, the services provided through~~  
32 ~~interagency agreements or agreements with contractors and~~  
33 ~~affordable housing assisted with the fund, the agency shall~~  
34 ~~maintain records that document the salaries, wages, related costs,~~  
35 ~~time spent, and substance of the activity on each affordable~~  
36 ~~housing development by each employee, agency, or contractor~~  
37 ~~compensated by the fund. contractors, including usual indirect~~  
38 ~~costs related thereto.~~

39 (B) Costs incurred by a nonprofit corporation that are not  
40 directly attributable to a specific project.

(2) Legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of a specific project that are authorized under Section 33334.2 and that are incurred by a *nonprofit* housing-developer *sponsor* are not planning and administrative costs for the purposes of this section, but are instead project costs.

(f) (1) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted, with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent a longer period of time may be required by other provisions of law, the agency shall require that housing units subject to this subdivision shall remain available at affordable housing cost to, and occupied by, persons and families of low or moderate income and very low income and extremely low income households for the longest feasible time, but for not less than the following periods of time:

(A) Fifty-five years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (A) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (B) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(B) Forty-five years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

1 (C) If land on which those dwelling units are located is deleted  
2 from the project area, the agency shall continue to require that  
3 those units remain affordable as specified in this subdivision.

4 (2) The agency shall require the *concurrent* recording in the  
5 office of the county recorder ~~of the following documents:~~

6 (A) *The* covenants or restrictions implementing this  
7 subdivision for each parcel, lot, or unit of real property subject to  
8 this subdivision. Notwithstanding any other provision of law, the  
9 covenants or restrictions shall run with the land and shall be  
10 enforceable, against the original owner and each successor in  
11 interest, by the agency, the community, or any interested party,  
12 including, but not limited to, any person or family of low or  
13 moderate income that is eligible to reside at the parcel, lot, or  
14 unit of real property, or that is displaced or threatened with  
15 displacement from the parcel, lot, or unit of real property that is  
16 subject to the covenants or restrictions. The agency shall obtain  
17 and maintain a copy of the recorded covenants or restrictions for  
18 at least the life of the covenants or restrictions.

19 (B) *A separate document entitled "Affordable Housing*  
20 *Restrictions on Transfer of Property," in 14-point type or larger.*  
21 *The document shall state and reference the affordability*  
22 *covenants or restrictions recorded pursuant to subparagraph (A)*  
23 *by recorder's identification number. The documents shall also*  
24 *include a description of the property covered by the covenants or*  
25 *restrictions, including, but not limited to, the legal description,*  
26 *assessor's parcel number, and street address, including, if*  
27 *applicable, the unit or apartment number.*

28 ~~(3) Simultaneous to the recordation of the covenants or~~  
29 ~~restrictions, the agency shall also record a request for notification~~

30 (C) *A request for notification of any resale or transfer of the*  
31 *real property for the life of the covenants or restrictions and shall*  
32 *obtain and maintain a copy of the recorded request for*  
33 *notification for at least the life of the covenants or restrictions.*  
34 *The request for notification of resale or transfer shall contain, at*  
35 *a minimum, all of the following:*

36 (i) *A reference stating the covenants or restrictions, by*  
37 *recorder's identification number, covered by the request for*  
38 *notification of resale or transfer is being recorded concurrently*  
39 *insert:.*

1     (ii) A description sufficient to identify the property covered by  
2     the covenants or restrictions, including, but not limited to, the  
3     legal description, assessor's parcel number, and street address,  
4     including, if applicable, the unit or apartment number.

5     (iii) The name of the property owner authorizing establishment  
6     of the covenants or restrictions.

7     (iv) The name of the agency and contact person requesting  
8     notice.

9     (v) The address where notice is to be mailed.

10    (vi) The acknowledged signature of the agency representative  
11    requesting notice.

12    (D) All authorized recording fees shall be collected for the  
13    recording of the covenants or restrictions and request for  
14    notification of resale or transfer.

15    (E) The parties to any resale or transfer shall be separately  
16    responsible to mail notice prior to the recording of the transfer to  
17    the address identified on any request for notification of resale or  
18    transfer associated with the property. The notice shall set forth  
19    the same information as required on the notification of resale or  
20    transfer as set forth in subparagraph (C), including the name,  
21    mailing address and contact information for the proposed new  
22    owner. A new request for notification of resale or transfer shall  
23    be prepared by the agency in the same manner as specified in  
24    this subparagraph and recorded concurrently with the transfer of  
25    the property. The recording fees shall be borne by the new  
26    owner.

27    (g) "Housing," as used in this section, includes residential  
28    hotels, as defined in subdivision (k) of Section 37912. The  
29    definitions of "lower income households," "very low income  
30    households," and "extremely low income households" in  
31    Sections 50079.5, 50105, and 50106 shall apply to this section.  
32    "Longest feasible time," as used in this section, includes, but is  
33    not limited to, unlimited duration.

34    (h) "Increasing, improving, and preserving the community's  
35    supply of low- and moderate-income housing," as used in this  
36    section and in Section 33334.2, includes the preservation of  
37    rental housing units assisted by federal, state, or local  
38    government on the condition that units remain affordable to, and  
39    occupied by, low- and moderate-income households, including  
40    extremely low and very low income households, for the longest

feasible time, but not less than 55 years, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require that the units remain affordable to, and occupied by, persons and families of low- and moderate-income and extremely low and very low income households for the longest feasible time but not less than 55 years. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if the following conditions are met:

(1) The replacement units in another location are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced.

~~(2) The persons and families of low or moderate income that are displaced are given a right of first refusal to occupy the replacement units.~~

~~(3)~~

(2) The comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

*(i) Agencies that have more than one project area may satisfy the requirements of Sections 33334.2 and 33334.6 and this section by allocating, in any fiscal year, less than 20 percent of funds in one project area, if the difference between the amount allocated and the 20 percent required is instead allocated, in that same fiscal year, to the Low and Moderate Income Housing Fund from tax increment revenues from other project areas. Prior to allocating funds pursuant to this subdivision, the agency shall make the finding required by subdivision (g) of Section 33334.2.*

~~(i)~~

*(j) Funds from the Low and Moderate Income Housing Fund shall not be used to the extent that other reasonable means of private or commercial financing of the new or substantially rehabilitated units at the same level of affordability and quantity are reasonably available to the agency or to the owner of the units. Prior to the expenditure of funds from the Low and Moderate Income Housing Fund for new or substantially rehabilitated housing units, where those funds will exceed 50 percent of the cost of producing the units, the agency shall find, based on substantial evidence, that the use of the funds is*

- 1 necessary because the agency or owner of the units has made a
- 2 good faith attempt but been unable to obtain commercial or
- 3 private means of financing the units at the same level of
- 4 affordability and quantity.

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